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- 24.— *The First Century of Dummer Academy. An Historical Discourse, delivered at Newbury, Byfield Parish, August 12, 1863. With an Appendix.* By NEHEMIAH CLEVELAND. Boston: Nichols and Noyes. 1865. 8vo. pp. 71, xliii.

THOUGH Dummer Academy, through its century of existence, has not been among the most distinguished or successful of the institutions of learning of its class in New England, it has done good service in its day, and has claims to remembrance which make its history worthy of preservation among our local records. It is fortunate in having found such an historian as the respected author of this Discourse. For nineteen years he was at the head of the Academy, and his faithful services have borne fruit in the lives of many of his pupils. The well-written pages of his narrative bear witness, not only to his hearty interest in all that concerns the institution, but also to his good sense and liberal sentiments. His pages will be found interesting to the lover of the characteristic and entertaining details of our local annals, and to the investigator of the history of education in New England, as well as to those who have had personal relations with the Academy.

NOTE TO ARTICLE V.

MR. DANA'S NOTES ON WHEATON'S ELEMENTS OF INTERNATIONAL LAW.

IN the year 1855, eight years after the author's death, an edition of Mr. Wheaton's work on International Law was published at Boston, with notes by Mr. William Beach Lawrence. In 1863 another edition appeared, also annotated by Mr. Lawrence, but with much greater fullness. Mr. Lawrence had been the friend of Mr. Wheaton, and undertook this labor for the benefit of Mr. Wheaton's family.

Prior to the publication of Lawrence's edition, in 1863, Mr. Wheaton's book had always been the official text-book of the United States government, that is to say, the government had furnished its foreign ministers and consuls with copies, and had kept a copy on board every national vessel.

An examination of the notes of the edition of 1863 at the State Department had resulted in its condemnation for disloyalty of sentiment in those parts wherein questions arising in the pending civil war were

discussed. The public was soon informed of the fact, and the character of Mr. Lawrence's annotations was fully exposed in the notices of the work which appeared in various journals. It was made evident that Mr. Lawrence had executed his work in no spirit of judicial impartiality, but with intent to discredit the government of his country and to afford aid to its enemies.

The sale of the book was brought to a dead stop in this country ; and it could only find a market in England, where the common feeling against the course of action of our government found confirmation in the statements and arguments of Mr. Lawrence. A weapon was furnished to the enemies of America by one of her own children.

It was to rescue the honorable fame of Mr. Wheaton from this disgrace, and to restore value and authority to the work, that those who had the deepest concern in the matter, and who experienced the utmost mortification in the fact of the factitious weight given to Mr. Lawrence's notes by their association with the original text, requested Mr. Dana to prepare a new edition of the work. No one in the country was better fitted to accomplish the task in the most satisfactory manner. A man of the highest honor, a true patriot, a lawyer of rare attainment and of judicial fairness of mind, versed in the literature of international law, and with large and recent practice in this special field of jurisprudence, having himself assisted in the settlement of some of the most important questions of the law, he came to the work with qualifications of the highest order.

No sooner, however, was it announced that Mr. Dana had undertaken this task, than Mr. Lawrence, assuming that he had reason to complain, as if he had by his previous labors acquired an exclusive right to the editorship of Mr. Wheaton's work, published a series of letters in the newspapers of a character of which we do not care to speak in the terms which alone can properly describe them. Not content with parading his own fancied griefs, he dragged before the public in the most scandalous manner the names of persons whose sex, among gentlemen, is a sanctuary, and whom he above all others was bound to treat with respect.

We should not soil our pages with an allusion to these letters were it not that, since the publication of Mr. Dana's edition of Wheaton, Mr. Lawrence has published another letter, the *animus* of which is illustrated by that of those which preceded it.

In the Preface to his edition, Mr. Dana says: "The notes of Mr. Lawrence do not form any part of this edition. It is confined to the text and notes of the author, and the notes of the present editor, who undertakes his work at the request of the widow of Mr. Wheaton, recently deceased, and of his only surviving children, his daughters."

In the New York Evening Post of August 22d appeared the letters from Mr. Lawrence to which we have just referred, and of which we here reprint the substantial part.

“The avowal in his [Mr. Dana’s] Preface, that he had entirely ignored my labors of fifteen years, and that nothing that had been contributed by me to the science of international laws was to be found in his volume, induced me to avail myself of the earliest moment of leisure to give this new book a cursory examination. With a pencil I marked, in the copy that I had bought, a reference to the correspondent matter in my edition. This it was the more easy to do, as Mr. Dana, in appropriating my annotations, not only without giving me credit for them, but actually denying that he had made any use of them, did not even take the trouble to alter their arrangement.

“In my last edition I had translated into English the very numerous citations from foreign languages. It is certainly a most miraculous coincidence that Mr. Dana, unaided by my previous labors, as he asserts, should not only have been led, from his investigations, to the same authors, that his translations should have been made in the same precise words, and that in the several thousand references to be found to works in English, French, Spanish, Italian, and German, there should have been no difference between us. This is still the more extraordinary from the fact that the typographical errors in such cases in the two editions are the same.

“The truth is, and the determination of the question does not depend on my assertion, or on that of Mr. Dana, but any intelligent person will, by comparing a copy of each edition, find, with the exception of such matters which have arisen since the publication, in 1863, of the last edition of Lawrence’s *Wheaton*, there is not a note in this spurious edition which has not been copied from me or suggested by my annotations. It may, indeed, be confidently affirmed that, without a free use of my book, Mr. Dana’s could never have been produced, and that in its preparation he has resorted to no other, except President Woolsey’s work for schools and colleges. There may be individual exceptions, but as far as my examination has gone I have found no other book referred to which was not cited in Lawrence’s *Wheaton*. Books of which I know that no second copy exists in America, facts derived from my correspondence with the publicists of Europe, are employed by Mr. Dana without scruple. Even accounts of events occurring during my own brief diplomatic career, and which have never been printed except in my edition of *Wheaton*, are referred to for familiar illustrations.”

On the tone or the English of this letter we will not remark, but we propose to take Mr. Lawrence’s specific charges in their order, and to examine them one by one, so far as they admit of separate consideration. First, he says that Mr. Dana, in appropriating, without acknowledgment, his notes, “did not even take the trouble to alter their arrangement.”

There is no foundation for this charge. It might, indeed, be natu-

rally supposed that, since the original work was in every case to furnish the primary idea to which further elucidation was to be given, and in connection with which modern facts were to be cited by the editors, we should find at least a similarity in the order of subject-matter. Such is not the case. Occasionally, indeed, each has treated of the same matters in his note on the same passage. But even these coincidences, which might have been anticipated almost as a necessity in nearly every case, are of comparatively rare occurrence; and so very variously are the same facts, cases, and topics arranged by the two editors, that the labor of collating the two works is rendered exceedingly difficult, even with the aid of their respective indexes. Not only the converse of Mr. Lawrence's statement is the real truth, but it is so to a very surprising extent.

Mr. Lawrence next asserts that he has translated "very numerous citations from foreign languages"; he regards it as "extraordinary" that Mr. Dana's "translation should have been made in the same precise words." There is an element of correctness in these remarks. Mr. Lawrence certainly has translated *very* numerous citations; and certainly any one will admit, as an abstract proposition, that it *would have been* very extraordinary, to use no stronger epithet, if Mr. Dana, in translating the same numerous passages, had used "the same precise words." We must note, however, a marked difference in the general manner in which these two annotators have executed their work. With precisely the same text, Mr. Lawrence has given us eleven hundred and forty octavo pages; Mr. Dana has given us seven hundred and fifty pages. So far as there is any difference in typography, the finer type is to be found in Mr. Lawrence's edition. This difference is striking, especially when we consider that upwards of two years crowded with matters of novelty and interest in the law had elapsed between the two publications. Mr. Lawrence, in his notes, gives us countless citations translated *verbatim* from every species of work or document that has any bearing upon the general topic. This it is that has made his volume so bulky, and this it is that has rendered his annotation cumbrous and confused. We read all that anybody has said on points on which scarcely two persons have agreed, and at the close we are left as best we may to conjure a definite notion out of the chaos of dispute. This style of editing is not that adopted by Mr. Dana. This gentleman first makes himself completely master of the views of the various publicists or statesmen who have discussed a question, and then in his own clear and terse language gives his readers the result of their labors in a few lines, as in a nutshell. He does not quote, but he states with a pregnant brevity the substance of whole pages of quotation.

Thus we find in him very few *verbatim* or literal citations from foreign writers, translated or otherwise. We have gone carefully through his whole work, and we have discovered much less than one hundred lines of literally-quoted translated matter. Probably Mr. Lawrence was not aware that the stubbornly demonstrable mathematics of the question stood thus, when he made his sweeping and extravagant assertion. We have farther sought to identify these quotations with Mr. Lawrence's translations of the same; but since it is seldom that Mr. Dana quotes more than two successive lines in this manner, and since hunting for a particular quotation in Lawrence is nearly as difficult a task as searching for an especial grain of sand on the sea-shore, we have not been so successful as we could have desired. Twice only have we found the same passage introduced by each. One of these passages was one line and a quarter in length, and was decidedly different in expression in the two works. The other passage was longer, and the difference was so great that it almost seemed as though it could not have been altogether accidental.

Mr. Lawrence further says, that this identity is "still the more extraordinary from the fact that the typographical errors in such cases in the two editions are the same." It was supposed that this remarkable allegation could hardly have been ventured upon, unless it had some foundation in fact; and with great labor it has indeed been traced to a definite source. In Mr. Lawrence's edition all his notes were enclosed in brackets and signed L. A copy of this work was given to the printer with directions to strike out everything which bore this mark. By an error of the printing-office, which escaped the subsequent scrutiny of Mr. Dana, Note 62 of Lawrence has been reprinted, and appears as Note 53 of Dana. It contains, however, not one word of original matter; it is simply a quotation enclosed in quotation-marks, and for which the reference is duly made. In this reference a typographical error occurs. It consists simply in the printing of "*Stephens's Blackstone*" instead of *Stephen's Blackstone*. The entire note is only four lines in length. The detection of this minute error shows clearly to what a microscopic examination Mr. Dana's work has been subjected; and at the same time that it proves certainly the existence of this one appropriation, it also leaves us free to apply the doctrine, *Expressio unius, exclusio alterius*; and we may fairly infer that, since this is the only case of the kind found, it is the only one existing, and that the plural word "errors" is a manifest case of hyperbole. We need hardly say, that it was the apparent insignificance of a note so short and wholly a quotation that caused it to escape the eye of Mr. Dana as he read over the proof-sheets; or that the accident which originated in the care-

lessness of others has given him no less pain than it seems to afford triumph to his adversary; and that prompt steps are to be taken to repair that slight error, which is frankly avowed.

Mr. Lawrence next asserts that, with the exception of such matters as have arisen since his edition was published, "there is not a note in this spurious edition which has not been copied from me or suggested by my annotations. It may indeed be confidently affirmed, that, without a free use of my book, Mr. Dana's could never have been produced, and that in its preparation he has resorted to no other except President Woolsey's work for schools and colleges." This is strong language, and the sneer applied to President Woolsey's excellent book is wholly uncalled for. With regard to this charge we can only say, that, as it is in its nature general and probably incapable, from the intrinsic merits of the case, of being rendered specific, so it cannot be specifically refuted. Yet precisely where in his own work Mr. Lawrence will display the materials for the notes on "The United States Judiciary," "The Monroe Doctrine," "Rebels as Pirates," "Belligerent Powers exercised in Civil War," "Prize Jurisdiction," "Carrying Hostile Persons and Papers," and numerous others, we are quite at a loss to conceive. Both editors have the same historical facts, the same diplomatic negotiations, to deal with. This is, from the nature of things, inevitable. Every historian of England has the same list of sovereigns, the same Parliamentary bills, the same changes of ministry to relate. In all works founded in whole or in part on the *positive events* of the past, a similarity, and often identity, of *subject-matter* is inevitable. We think that Mr. Lawrence is the first man who ever undertook to call this by the ugly name of plagiarism. After a very careful examination and comparison of both the editions of Wheaton, we cannot see in what particular the production of Mr. Dana's work would have been obstructed, though Mr. Lawrence had never written. But when any individual note shall be signified as the original, or the suggesting foundation, of any one of Mr. Dana's notes, it will then be time to re-examine this loose and wandering charge.

Mr. Lawrence also regards it as a "most miraculous coincidence, that Mr. Dana, unaided by my previous labors, as he asserts, should not only have been led from his own investigations to the same authors," &c., &c. Also he says: "There may be individual exceptions, but as far as my examination has gone I have found no other book (than President Woolsey's) referred to which was not cited in Lawrence's Wheaton." These sentences have the appearance of having been designed to deceive and to take an unfair advantage of unprofessional readers. To all persons in the least degree acquainted with the study of international

law, the fact stated by Mr. Lawrence will seem by no means "miraculous," but rather absolutely unavoidable. This science is the growth of modern days. It is not long since Grotius wrote upon it, speculatively, regarding it as a subject which demanded rather than furnished rules and principles. The number of publicists of any note whatsoever is very limited. They could be named from memory and counted upon the fingers in much less than five minutes. The works of all of them would not fill a very large bookcase. To undertake to write upon international law without having first obtained a familiar acquaintance with all of them would be a piece of folly of which no sensible man would be guilty. One would judge from Mr. Lawrence's remarks, that these writers were multitudinous; that one had to choose wisely a reasonable number from their crowded ranks, and that, after Mr. Lawrence had carefully made a sage selection, Mr. Dana had quietly taken his list. No impression could be more erroneous. Both editors—for we wish to do no injustice to Mr. Lawrence—both certainly have examined all these writers; both are intimate with the valuable parts of their works; both have made use of them in such a manner and to such extent as they have seen fit. But to presume that there are others outside this charmed circle, and that Mr. Dana has not stumbled upon any of them, because he followed implicitly the selection of Mr. Lawrence, is as absurd as if one religious writer should accuse another of having stolen his list of the Gospels because he had quoted only from four Evangelists. In fact, we find that Mr. Dana has made very free use of the work of Pfeiffer, an able and eminent man, whom Mr. Lawrence has quite disregarded, and that he has paid slender respect to the lucubrations of M. Hautefeuille, who has furnished the backbone of Mr. Lawrence's annotation.

Besides the works of publicists, we find of course references to treaties. Treaties, however, are the public property of the world; they are published, open, notorious. Ignorance of them would simply imply a complete incompetence for the task undertaken. We may dismiss this point as requiring no discussion; and the next is of similar nature. A very large portion of the references in both works are to causes tried and decided in the law courts of this country and Great Britain. The number of these is certainly tolerably large. It would probably strike persons untrained in the mysteries of the law as much more formidable than it in fact is. Law books upon "Contracts," "Wills," "Real Property," and a hundred topics, are yearly coming from the press, in which the table of cases is much larger than that in either of these volumes. A knowledge of cases is natural to the jurist; he learns from one to find another; he can trace with surprising speed and accuracy the long

series through scattered volumes of reports ; the labor is not so stupendous as to the uninitiated it would seem. In the later case the prior cases are cited, and the cohesiveness of the whole mass is greater than could be guessed. Moreover those cases in which points of international law are discussed are generally, as it were, "ear-marked," and are readily accessible. It has been Mr. Dana's business, as United States District-Attorney for the last five years, to acquire a close and thorough acquaintance with precisely these cases ; and the able manner in which he has performed his professional duties is irrefragable proof that he has done so. And here again we must give to Mr. Lawrence one more mathematical statement, — for figures tell no lies. It is a fact within our own accurate and positive knowledge, that the table of cases in Mr. Dana's volume contains about one hundred and seventy-five cases which are not to be found in Mr. Lawrence's table. All of these certainly did not arise within the three years which elapsed between the publication of the two works. In fact, we think that less than twenty can be referred to this period.

Mr. Lawrence further charges that "books" of which he "knows that no second copy exists in America are employed by Mr. Dana without scruple." Probably he means that *his quotations* from these books — not the books themselves — were thus used. Those who believe that Mr. Lawrence has such an intimate acquaintance with all the libraries in the country, and with the result of the efforts which have been made by the able and energetic publishing house which has brought out Mr. Dana's edition to procure the requisite works from abroad, may credit this statement. We doubt if Mr. Lawrence would be willing to name the particular work upon which he would allow his allegation to be put to the test. There is something ludicrously schoolboyish and provincial in an accusation of this kind. It stamps the *nouveau riche* in scholarship as unmistakably as some other parts of Mr. Lawrence's letters betray the man of imperfect breeding.

Finally he says : "Even accounts of events occurring during my own brief diplomatic career, and which have never been printed except in my edition of Wheaton, are referred to for familiar illustrations." Does Mr. Lawrence wish us to think that all which he accomplished in that "brief diplomatic career" is to be forever sacredly enshrined within the limits of his own work ? We are aware of no such peculiar features in his foreign performances, so distinguishing them from the labors of other statesmen and diplomatists as to render a reference to them by a lawyer or an historian an unwarranted trespass. Had Mr. Dana wholly ignored them, Mr. Lawrence might have felt injured, and might have complained of the neglect. Certainly the notion that he has a

peculiar private monopoly of narration in all matters connected with "his own brief diplomatic career" is no less novel than absurd. The labors of diplomats, being paid for, however insufficiently, by the public, have always been regarded as public property.

We have thus gone through, one by one, with Mr. Lawrence's charges against Mr. Dana. We have conclusively exhibited the groundlessness of some of them, the folly of others. Mr. Dana's reputation has nothing to fear from such an assault. The blow recoils with terrible force upon the assailant.

LIST OF SOME RECENT PUBLICATIONS.

1. *Histoire de Jules César.* Par S. M. I. Napoléon III. Tome Deuxième. New York: D. Appleton et Cie. 1866. Sm. 8vo. pp. 552.

2. *History of Julius Cæsar.* Vol. II. The Wars in Gaul. New York: Harper and Brothers. 1866. 8vo. pp. xv., 659.

3. *The Conversion of the Northern Nations.* The Boyle Lectures for the Year 1865. By Charles Merivale, B. D. New York: D. Appleton & Co. 1866. Sm. 8vo. pp. 231.

4. *A History of the Gypsies: with Specimens of the Gypsy Language.* By Walter Simson. Edited by James Simson. New York: M. Doolady. 1866. 12mo. pp. 575.

5. *Life and Times of Andrew Johnson, Seventeenth President of the United States.* Written from a National Stand-point. By a National Man. New York: D. Appleton & Co. 1866. 12mo. pp. xii., 363.

6. *Stonewall Jackson: a Military Biography, with a Portrait and Maps.* By John Esten Cooke. New York: D. Appleton & Co. 1866. Sm. 8vo. pp. 470.

7. *A Narrative of Andersonville, drawn from the Evidence elicited on the Trial of Henry Wirz, the Jailer.* With the Argument of Col. N. P. Chapman, Judge Advocate. By Ambrose Spencer. New York: Harper and Brothers. 1866. 16mo. pp. 272.

8. *Medical Recollections of the Army of the Potomac.* By Jonathan Letterman, M. D., late Surgeon United States Army, and Medical Director of the Army of the Potomac. New York: D. Appleton & Co. 1866. 8vo. pp. 194.

9. *History of the Atlantic Cable.* By Henry M. Field, D. D. New York: Charles Scribner & Co. 1866. 12mo. pp. 364.

10. *English Travellers and Italian Brigands. A Narrative of Capture and Captivity.* With a Map and several Illustrations. New York: Harper and Brothers. 1866. 12mo. pp. 355.

11. *Elements of International Law and Laws of War.* By H. W. Halleck, LL. D., Major-General United States Army. Prepared for the Use of